

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IGNACIO FRANCO,) NO. CV 17-5965-E

Plaintiff,
)

MEMORANDUM OPINION

NANCY A. BERRYHILL, Deputy
Commissioner for Operations,
Social Security,

Defendant.

PROCEEDINGS

22 Plaintiff filed a complaint on August 10, 2017, seeking review of
23 the Commissioner's denial of disability benefits. The parties filed a
24 consent to proceed before a United States Magistrate Judge. Plaintiff
25 filed a motion for summary judgment on April 6, 2018. Defendant filed
26 a motion for summary judgment on June 6, 2018. The Court has taken
27 the motions under submission without oral argument. See L.R. 7-15;
28 Order, filed August 15, 2017.

BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION

Plaintiff, a former electrician and foreman for an electrical contractor, asserted disability since September 27, 2009, based on alleged: osteoarthritis, diabetes, peripheral neuropathy, degenerative disc disease, muscle spasms, chronic pain, trouble sleeping, and hypertension (Administrative Record ("A.R.") 35-82, 149-88, 199-230, 246-802). Plaintiff claimed that his impairments cause him to suffer pain and limitations that prevent him from working (A.R. 56-64).

An Administrative Law Judge ("ALJ") reviewed the medical record and heard testimony from Plaintiff, a medical expert, and a vocational expert (A.R. 18-185, 187-245, 250-802). The ALJ found that Plaintiff suffers from severe degenerative disc disease, osteoarthritis, diabetes mellitus, and peripheral neuropathy, but retains the residual functional capacity to perform a limited range of medium work. (A.R. 22-27). The ALJ further found that, with such capacity, Plaintiff could perform medium work as a "laundry worker" or "sweeper/cleaner," and therefore is not disabled (A.R. 28-29) (adopting vocational expert testimony at A.R. 72-74). The Appeals Council denied review (A.R. 1-3).

In reaching his decision, the ALJ found Plaintiff's statements concerning the severity of Plaintiff's alleged symptoms not entirely credible (A.R. 23-27). Plaintiff contends that the ALJ's stated reasons for this finding are legally insufficient. See Plaintiff's Motion, pp. 1-10.

STANDARD OF REVIEW

Under 42 U.S.C. section 405(g), this Court reviews the

Administration's decision to determine if: (1) the Administration's findings are supported by substantial evidence; and (2) the Administration used correct legal standards. See Carmickle v.

Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner of Social Sec. Admin., 682 F.3d 1157, 1161 (9th Cir. 2012).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citation and quotations omitted); see Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

If the evidence can support either outcome, the court may not substitute its judgment for that of the ALJ. But the Commissioner's decision cannot be affirmed simply by insulation or recognition of a set of uncontested evidence.

Rather, a court must consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [administrative] conclusion.

Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and quotations omitted).

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DISCUSSION

After consideration of the record as a whole, Defendant's motion is granted and Plaintiff's motion is denied. The Administration's findings are supported by substantial evidence and are free from material¹ legal error. Plaintiff's contrary argument is unavailing.

I. Substantial Evidence Supports the Conclusion that Plaintiff Can Work.

Substantial evidence supports the ALJ's conclusion that Plaintiff is not disabled. The medical expert reviewed the record and essentially opined that Plaintiff is capable of performing the limited range of medium work the ALJ assessed. The medical expert opined that Plaintiff can lift 50 pounds occasionally and 20 pounds frequently, stand six hours in an eight hour day with a sit/stand option to stretch two minutes out of every hour, occasionally kneel, crouch, and crawl, but must avoid ladders, ropes, and scaffolds (A.R. 47-49;

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¹ The harmless error rule applies to the review of administrative decisions regarding disability. See Garcia v. Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v. Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005).

1 || compare A.R. 23 (ALJ's residual functional capacity determination).²
2 The medical expert said that, based on Plaintiff's complaints,
3 Plaintiff could have some fingering or handling restrictions, but the
4 expert did not see any medical basis for any such restrictions (A.R.
5 50-51; see also A.R. 43 (expert noting that Plaintiff's sensory
6 functions were intact upon testing); A.R. 296, 561, 567 (treatment
7 notes indicating Plaintiff's upper extremity sensory functions were
8 "intact to light touch")).

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10 The state agency physician found Plaintiff capable of performing
11 medium work (A.R. 83-89). The record contains no other opinion
12 evidence concerning Plaintiff's abilities or limitations apart from
13 one notation from May of 2013 by Dr. Yanfeng Wang, who treated
14 Plaintiff briefly with physical therapy. When Plaintiff asked to talk
15 to Dr. Wang on the phone concerning Plaintiff's alleged disability,
16 Dr. Wang wrote, "[Plaintiff] has OA [osteoarthritis] affecting many
17 joints, we may need to discussed [sic] modified work restrictions

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23 ² "Medium work involves lifting no more than 50 pounds at
24 a time with frequent lifting or carrying of objects weighing up
25 to 25 pounds." See 20 C.F.R. §§ 404.1567(c), 416.967(c).
Although the medical expert opined Plaintiff could frequently
lift 20 pounds (not 25 pounds), this discrepancy is not material
to the ALJ's ultimate determination that Plaintiff can work (A.R.
23). On inquiry, the vocational expert identified no difference
in the work a person with Plaintiff's residual functional
capacity could perform if limited to frequent lifting of 20
pounds versus frequent lifting of 25 pounds. See A.R. 72.
Moreover, the ALJ found Plaintiff could perform "medium work,"
i.e., could frequently lift and carry 25 pounds.

1 rather than total disability" (A.R. 564).³ Dr. Wang's cryptic note is
2 not necessarily inconsistent with the opinion of the medical expert,
3 the opinion of the state agency physician or the findings of the ALJ.

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5 Where, as here, the opinions of non-examining physicians do not
6 contradict "all other evidence in the record," the opinions may
7 furnish substantial evidence to support the administrative decision.
8 See Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citation
9 omitted); see also Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir.
10 2001) (opinion of non-examining medical expert "may constitute
11 substantial evidence when it is consistent with other independent
12 evidence in the record") (citation omitted). As the ALJ observed, the
13 findings on examination of Plaintiff were mostly unremarkable, and
14 test results were consistent with the medical expert's opinion that
15 Plaintiff has moderate degenerative disc disease and mild
16 osteoarthritis (A.R. 24-27, 44). See A.R. 382-84 (December, 2011
17 treatment note for diabetic follow up, reporting no abnormalities on
18 examination); A.R. 343-44 (January, 2012 treatment note for complaints
19 of left shoulder pain, with reported findings on examination of mild
20 tenderness in the left shoulder with full range of motion, but no
21 other abnormalities indicated; diagnosing left shoulder strain and

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23 ³ Dr. Christopher Kramsch, who treated Plaintiff for
24 diabetes, indicated in August of 2013 that Dr. Kramsch had a
25 disability form but would not fill it out until Plaintiff came in
26 for an appointment (A.R. 557). Dr. Kramsch characterized
27 Plaintiff as an "out of control diabetic that [sic] has not
responded to multiple attempts to get him to RTC [return to
clinic]" (A.R. 557; see also A.R. 267-70, 288-90, 342-43, 372-75,
455-56, 459-61, 556, 568-70, 572-75, 593-94, 683-84 (notes
regarding attempts to get Plaintiff to come in for an
appointment)). Records from Plaintiff's next appointment with
28 Dr. Kramsch do not mention disability forms. See A.R. 553-56.

1 suggesting "heat, rest, massage, meds"); A.R. 336-40 (February, 2012
2 treatment note for complaints of chest pain, reporting no
3 abnormalities on examination); A.R. 591-92 (August, 2012 treatment
4 note for diabetes follow up with complaints of neck pain and shoulder
5 pain on and off for one year with no relief from heat, Vicodin,⁴ or
6 Motrin, reporting findings on examination of tenderness in the neck
7 and shoulders with full range of motion, but no other abnormalities
8 indicated; diagnosing shoulder strain and neck strain and suggesting
9 "heat, rest, massage, meds"); A.R. 293-98 (September, 2012 treatment
10 note for complaints of neck pain, shoulder pain, low back pain
11 radiating to the hip, and right groin "clicks," with reported findings
12 on examination of right groin pain, tenderness to palpation in the
13 neck, but no other abnormalities indicated, suggesting mild "DJD"
14 (degenerative joint disease); assessing arthritis and ordering x-rays
15 before determining appropriate treatment);⁵ A.R. 277-80 (October, 2012
16 treatment note for complaints of ear pain, head pain, neck pain, and
17 back pain, with reported findings on examination of decreased range of
18 motion and tenderness of the left lower back, and "tympanic membrane
19 injected" in the left ear, with no other abnormalities indicated;
20 assessing otitis media and low back pain, and prescribing Ibuprofen);
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22 ⁴ Vicodin is not listed among Plaintiff's medications
(A.R. 203, 547-48).

23 ⁵ Plaintiff's doctor reportedly would consider treatment
24 with "tylenol, tramadol, muscle relaxors [sic], physical therapy,
acupuncture, etc.", depending on the x-ray results (A.R. 298).
25 The x-rays of Plaintiff's lumbar spine showed disc space
narrowing and osteophyte formation at L5-S1 consistent with
26 moderate degenerative change (A.R. 275-76). X-rays of
Plaintiff's cervical spine showed disc space narrowing and
27 osteophyte formation at C4-C5 and C5-C6 consistent with moderate
degenerative change (A.R. 284). X-rays of Plaintiff's hip showed
28 joint space narrowing and osteophyte formation with mild
degenerative changes (A.R. 562).

1 A.R. 271-73 (November, 2012 treatment note for complaints of left
2 flank pain reportedly not improving with Ibuprofen, with reported
3 findings on examination of neck pain and back pain, with no other
4 abnormalities indicated; assessing low back pain and prescribing
5 Norco); A.R. 264-66 (March, 2013 treatment note for diabetes follow up
6 with complaints of low back pain and leg pain, reporting no
7 abnormalities on examination); A.R. 565-68 (April, 2013 treatment note
8 for complaints of neck pain and shoulder pain, reporting findings on
9 examination of tenderness to palpation in the neck and right groin
10 pain, but no other abnormalities indicated; assessing arthritis; the
11 note states that Plaintiff presented for pain control, was prescribed
12 Tramadol and Lidocaine ointment (with an indication to consider Norco
13 if Tramadol was ineffective), and that Plaintiff "defer[red] surgical
14 referral"); A.R. 560-62 (June, 2013 treatment note for a physical
15 medicine consultation, reporting finding on examination of right groin
16 pain, but no other abnormalities indicated; assessing arthritis and
17 prescribing Norco); A.R. 554-55 (September, 2013 treatment note for
18 diabetes follow up with complaints of joint pain and edema, reporting
19 no abnormalities on examination); A.R. 553-54 (October, 2013 treatment
20 note for diabetes follow up, reporting no abnormalities on
21 examination).

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23 To the extent the evidence of record is conflicting, the ALJ
24 properly resolved the conflicts. See Treichler v. Commissioner, 775
25 F.3d 1090, 1098 (9th Cir. 2014) (court "leaves it up to the ALJ" to
26 resolve conflicts and ambiguities in the record); Andrews v. Shalala,
27 53 F.3d 1035, 1039-40 (9th Cir. 1995) (court must uphold the
28 administrative decision when the evidence "is susceptible to more than

1 one rational interpretation").

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3 The vocational expert testified that a person having the residual

4 functional capacity the ALJ found to exist could perform jobs existing

5 in significant numbers (A.R. 72-80). The ALJ properly relied on this

6 testimony in denying disability benefits. See Barker v. Secretary,

7 882 F.2d 1474, 1478-80 (9th Cir. 1989); Martinez v. Heckler, 807 F.2d

8 771, 774-75 (9th Cir. 1986).

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10 **II. The ALJ Stated Sufficient Reasons for Finding Plaintiff's**

11 **Subjective Complaints Less Than Fully Credible.**

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13 Plaintiff challenges the sufficiency of the ALJ's stated reasons

14 for finding Plaintiff's subjective complaints not entirely credible.

15 See Plaintiff's Motion, pp. 1-10. An ALJ's assessment of a claimant's

16 credibility is entitled to "great weight." Anderson v. Sullivan, 914

17 F.2d 1121, 1124 (9th Cir. 1990); Nyman v. Heckler, 779 F.2d 528, 531

18 (9th Cir. 1985). Where, as here, an ALJ finds that a claimant's

19 medically determinable impairments reasonably could be expected to

20 cause some degree of the alleged symptoms of which the claimant

21 subjectively complains, any discounting of the claimant's complaints

22 must be supported by specific, cogent findings. See Berry v. Astrue,

23 622 F.3d 1228, 1234 (9th Cir. 2010); Lester v. Chater, 81 F.3d 821,

24 834 (9th Cir. 1995); but see Smolen v. Chater, 80 F.3d 1273, 1282-84

25 (9th Cir. 1996) (indicating that ALJ must offer "specific, clear and

26 convincing" reasons to reject a claimant's testimony where there is no

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1 evidence of malingering).⁶ An ALJ's credibility findings "must be
2 sufficiently specific to allow a reviewing court to conclude the ALJ
3 rejected the claimant's testimony on permissible grounds and did not
4 arbitrarily discredit the claimant's testimony." See Moisa v.
5 Barnhart, 367 F.3d 882, 885 (9th Cir. 2004) (internal citations and
6 quotations omitted); see also Social Security Ruling 96-7p (explaining
7 how to assess a claimant's credibility), superseded, Social Security
8 Ruling 16-3p (eff. March 28, 2016).⁷ As discussed below, the ALJ
9 stated sufficient reasons for deeming Plaintiff's subjective
10 complaints less than fully credible.

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12 Plaintiff testified that he stopped working in September of 2009
13 because he was laid off work (A.R. 55; but see A.R. 201 (Plaintiff
14 reporting in a disability form that he stopped working in September of
15 2009 due to his medical conditions)). Plaintiff also claimed that his

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17 ⁶ In the absence of an ALJ's reliance on evidence of
"malingering," most recent Ninth Circuit cases have applied the
18 "clear and convincing" standard. See, e.g., Brown-Hunter v.
Colvin, 806 F.3d 487, 488-89 (9th Cir. 2015); Burrell v. Colvin,
19 775 F.3d 1133, 1136-37 (9th Cir. 2014); Treichler v.
Commissioner, 775 F.3d 1090, 1102 (9th Cir. 2014); Ghanim v.
20 Colvin, 763 F.3d 1154, 1163 n.9 (9th Cir. 2014); Garrison v.
Colvin, 759 F.3d 995, 1014-15 & n.18 (9th Cir. 2014); see also
21 Ballard v. Apfel, 2000 WL 1899797, at *2 n.1 (C.D. Cal. Dec. 19,
2000) (collecting earlier cases). In the present case, the ALJ's
22 findings are sufficient under either standard, so the distinction
between the two standards (if any) is academic.

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24 ⁷ Social Security Rulings ("SSRs") are binding on the
Administration. See Terry v. Sullivan, 903 F.2d 1273, 1275 n.1
(9th Cir. 1990). The appropriate analysis in the present case
25 would be substantially the same under either SSR. See R.P. v.
Colvin, 2016 WL 7042259, at *9 n.7 (E.D. Cal. Dec. 5, 2016)
26 (observing that only the Seventh Circuit has issued a published
decision applying Ruling 16-3p retroactively; also stating that
Ruling 16-3p "implemented a change in diction rather than
27 substance") (citations omitted); see also Trevizo v. Berryhill,
871 F.3d 664, 678 n.5 (9th Cir. 2017) (suggesting that SSR 16-3p
28 "makes clear what our precedent already required").

1 pain worsened within six to eight months after he stopped working
2 (A.R. 62). Yet, Plaintiff reported in a Pain Questionnaire that his
3 pain did not begin to affect his activities until November of 2010
4 (A.R. 226). Plaintiff said that he had physical therapy for
5 approximately a month but otherwise treated with medication and
6 exercise (A.R. 63-65).

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8 Plaintiff claimed that he could not work due to allegedly
9 constant low back pain, arthritis, diabetes, neck pain, hip pain, foot
10 pain, wrist pain, loss of feeling in his hands, and a supposed
11 inability to bend (A.R. 56-58). Plaintiff said that he takes Norco up
12 to two times a day for his pain (though not every day) and that Norco
13 supposedly makes him groggy (A.R. 57, 61-62). Plaintiff claimed that
14 approximately three days a week his symptoms are so bad that he rests
15 and that sometimes just resting hurts also (A.R. 64).

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17 Plaintiff admitted that he walks for exercise, can walk for a
18 quarter of a mile before needing to rest, and can walk for a total of
19 three to four hours in a day (A.R. 58). Plaintiff stated that he: (1)
20 can lift around 10 pounds; (2) has trouble rotating his neck; (3) has
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28 trouble gripping and grasping; and (4) cannot bend, kneel or crouch

1 most of the time (A.R. 59-62).⁸
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4 The ALJ acknowledged Plaintiff's subjective complaints, and
5 stated: "In terms of the claimant's alleged inability to do work. . . ,
6 the record does not contain evidence that shows that the claimant is
7 functionally unable to work" (A.R. 23-24). The ALJ discussed the
8 "unremarkable" findings in the medical record, described Plaintiff's
9 treatment as "conservative in nature and not the type one would expect
10 from a disabling condition" (*i.e.*, Plaintiff was not currently being
11 treated with anything other than medication; he had only a very short
12 course of physical therapy; he had not had any pain injections for his
13 back, neck, or hips; and he took no medication for the supposed
14 numbness and tingling in his hands) (A.R. 24-27). On Plaintiff's
15 inconsistent reports, the ALJ also found that Plaintiff had stopped

16 ⁸ In a Pain Questionnaire dated January 26, 2014,
17 Plaintiff reported that he had been taking Hydrocodone (Norco)
18 twice daily for two years for his pain and that Norco causes no
19 side effects (A.R. 225-27; but see A.R. 547 (medication record
20 indicating Norco was first prescribed in November of 2012)). To
21 help relieve his pain, Plaintiff said he walked for short periods
22 of time and did some leg exercises (A.R. 226). Plaintiff
23 reportedly could walk, do household chores, wash clothes, and
24 wash dishes (A.R. 226). He reportedly could not lift heavy
25 objects, sit for a long time, or walk long distances (A.R. 226).
26 Plaintiff reportedly could walk a half mile, stand for three
27 hours at a time, sit for up to an hour at a time, and drive, do
28 housekeeping, and run errands without assistance (A.R. 227). As
 noted above, Plaintiff reported that his pain first affected his
 activities in November of 2010 (A.R. 226).

29 In an undated "Disability Report - Adult" form, Plaintiff
30 claimed that he stopped working on September 27, 2009, because of
31 his medical conditions (A.R. 200-01). Therein, Plaintiff
32 reported that he could: (1) walk for 30 minutes before needing to
33 rest for up to 10 minutes; (2) stand for approximately 20 minutes
34 before needing to rest for up to 10 minutes; (3) sit for
35 approximately 30 minutes while constantly adjusting his position
36 before getting up or lying down; and (4) pick things up with both
37 hands because he supposedly drops objects when he tries to pick
38 them up with one hand (A.R. 206).

1 working at the time of the alleged onset date because he was laid off
2 and not because of any symptoms related to his impairments (A.R. 27).
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4 An ALJ permissibly may rely on a lack of objective medical
5 evidence to discount a claimant's allegations of disabling
6 symptomology. See Burch v. Barnhart, 400 F.3d 676, 681 (2005)
7 ("Although lack of medical evidence cannot form the sole basis for
8 discounting pain testimony, it is a factor the ALJ can consider in his
9 [or her] credibility analysis."); Rollins v. Massanari, 261 F.3d 853,
10 857 (9th Cir. 2001) (same); see also Carmickle v. Commissioner, 533
11 F.3d 1155, 1161 (9th Cir. 2008) ("Contradiction with the medical
12 record is a sufficient basis for rejecting the claimant's subjective
13 testimony"); SSR 16-3p, 2016 WL 1119029, at *4 (Mar. 16, 2016)
14 ("[O]bjective medical evidence is a useful indicator to help make
15 reasonable conclusions about the intensity and persistence of
16 symptoms, including the effects those symptoms may have on the ability
17 to perform work-related activities . . ."). As cited above (and as
18 summarized by the medical expert (A.R. 43-47) and the ALJ (A.R. 24-
19 27)), the medical record contains mostly unremarkable examination

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1 findings.⁹ X-rays of Plaintiff's spine and hips showed some
2 degenerative changes consistent with disc disease and arthritis, which
3 the medical expert and state agency physician considered in assessing
4 Plaintiff's residual functional capacity. See A.R. 275-76, 284, 471-
5 72, 562 (imaging reports).

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7 An ALJ may also properly discount a claimant's allegations of
8 disabling pain based on a conservative course of treatment. See,
9 e.g., Parra v. Astrue, 481 F.3d 742, 750-51 (9th Cir. 2007), cert.
10 denied, 552 U.S. 1141 (2008) (treatment with over-the-counter pain
11 medication is "conservative treatment" sufficient to discredit a
12 claimant's testimony regarding allegedly disabling pain); Johnson v.
13 Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995) (conservative treatment
14 can suggest a lower level of both pain and functional limitation,
15 justifying adverse credibility determination). Similarly, an
16 "unexplained or inadequately explained failure to seek treatment
17 [consistent with the alleged severity of subjective complaints]" may
18 also justify discounting a claimant's allegations of disabling pain.
19 See Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012) (in
20 assessing a claimant's credibility the ALJ may properly rely on
21 "unexplained or inadequately explained failure to seek treatment or to
22 follow prescribed course of treatment") (citations and internal
23 quotation marks omitted); see also SSR 96-7p at *8 ("[Claimant's]
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9 There were remarkable findings relating to a cancerous tumor, which was discovered in October of 2011 and removed in January and March of 2012 (A.R. 361-72, 380-82, 384-449, 463-69, 599-611, 618-31, 637-77). This tumor and the treatment therefor do not form any part of Plaintiff's disability claim. See A.R. 200 (Plaintiff's list of allegedly disabling conditions does not mention anything related to the tumor).

1 statements may be less credible if the level or frequency of treatment
2 is inconsistent with the level of complaints. . . ."); SSR 16-3p at *9
3 ("Persistent attempts to obtain relief of symptoms, such as increasing
4 dosages or changing medications, trying a variety of treatments,
5 referrals to specialists, or changing treatment sources may be an
6 indication that an individual's symptoms are a source of distress and
7 may show that they are intense and persistent. ¶ In contrast, if the
8 frequency or extent of the treatment sought. . . is not comparable
9 with the degree of the individual's subjective complaints, or if the
10 individual fails to follow prescribed treatment that might improve
11 symptoms, we may find the alleged intensity and persistence of an
12 individual's symptoms are inconsistent with the overall evidence of
13 record.").

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15 The record reflects that Plaintiff sought little treatment for
16 his allegedly disabling impairments. The first reported treatment for
17 any alleged pain occurred in January of 2012 (A.R. 343-44). Plaintiff
18 was not prescribed Norco until November of 2012 (A.R. 273). Plaintiff
19 said he attended only approximately one month of physical therapy, had
20 no injections for his pain, and stopped seeking treatment for his pain
21 other than Norco (which he took only on some days) (A.R. 63-65).
22 There is no indication that Plaintiff sought additional treatment for
23 his pain and, in fact, the record suggests that Plaintiff failed to
24 keep appointments with his treatment providers and deferred any
25 surgery consultation. See, e.g., A.R. 267-70, 288-90, 342-43, 372-75,
26 455-56, 459-61, 556, 568-70, 572-75, 593-94, 683-84 (notes regarding
27 attempts to get Plaintiff to come in for an appointment); A.R. 568
28 (Plaintiff reportedly deferring surgery consultation).

1 There is some doubt whether treatment with Norco should be
2 characterized as "conservative." See Smith v. Colvin, 2015 WL
3 5882896, at *6 (C.D. Cal. Oct. 7, 2015) (citing Childress v. Colvin,
4 2014 WL 4629593, at *12 (N.D. Cal. Sept. 16, 2014) ("It is not obvious
5 whether the consistent use of [Norco] (for several years) is
6 'conservative' or in conflict with Plaintiff's pain testimony."));
7 Aquilar v. Colvin, 2014 WL 3557308, at *8 (C.D. Cal. July 18, 2014)
8 ("there is evidence in the record that Plaintiff has been prescribed
9 narcotic pain medications, . . . It would be difficult to fault
10 Plaintiff for overly conservative treatment when he has been
11 prescribed strong narcotic pain medications")). Under the
12 circumstances of this case, however, the ALJ's characterization of
13 Plaintiff's treatment as "conservative" appears appropriate.
14 Plaintiff's limited course of treatment and his use of Norco during
15 only a portion of the alleged disability period, while refusing a
16 referral for a surgical evaluation, properly undercut the veracity of
17 Plaintiff's testimony and statements. See, e.g., Riebling v.
18 Berryhill, 2018 WL 1896528, at *18 (C.D. Cal. Apr. 18, 2018) (ALJ did
19 not err in characterizing treatment for back pain with narcotic pain
20 medications as more conservative than one would expect for a person
21 who claims disability, where the claimant declined referral to
22 specialized pain management); Wallace v. Berryhill, 2017 WL 3835169,
23 at *3-4 (C.D. Cal. Aug. 31, 2017) (ALJ did not err in finding that the
24 claimant's treatment history was inconsistent with disability where
25 the claimant took Tramadol for two years which helped with her pain);
26 Medel v. Colvin, 2014 WL 6065898, at *8 (C.D. Cal. Nov. 13, 2014)
27 (affirming ALJ's characterization of claimant's treatment as
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1 conservative where claimant had been "prescribed only Vicodin and
2 Tylenol for his allegedly debilitating low-back pain").
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4 Furthermore, assuming, arguendo, that the ALJ's partial reliance
5 on Plaintiff's "conservative" treatment was improper, the Court
6 nevertheless upholds the ALJ's determination. Under Carmickle v.
7 Commissioner, 533 F.3d at 1163, the infirmity of one or two supporting
8 reasons for an ALJ's determination regarding subjective symptoms does
9 not require overturning the determination if independently valid
10 supporting reasons remain. Here, the lack of supporting objective
11 medical evidence and the fact that Plaintiff inconsistently stated
12 that he stopped working because of his medical conditions and that he
13 stopped working because he had been laid off, are independently valid
14 reasons for discounting Plaintiff's testimony and statements. As to
15 the latter, a claimant's inconsistencies, as well as an admission of
16 stopping work for reasons other than the claimant's conditions,
17 properly may impugn the accuracy of a claimant's testimony and
18 statements. See Brackett v. Comm'r of Soc. Sec. Admin., 468 Fed.
19 App'x 754, 755 (9th Cir. 2012) (ALJ permissibly discounted claimant's
20 subjective pain testimony partly because claimant stopped working only
21 when he was laid off due to a plant closure); Burch v. Barnhart, 400
22 F.3d 676, 680 (9th Cir. 2005) ("In determining credibility, an ALJ may
23 engage in ordinary techniques of credibility evaluation, such as
24 considering . . . inconsistencies in claimant's testimony"); Bruton v.
25 Massanari, 268 F.3d 824, 828 (9th Cir. 2001) (ALJ did not err in
26 discrediting claimant's subjective complaints where claimant "stated
27 at the administrative hearing and to at least one of his doctors that
28 he left his job because he was laid off, rather than because he was

1 injured"); Drouin v. Sullivan, 966 F.2d 1255, 1256, 1258 (9th Cir.
2 1992) (ALJ did not err in rejecting claimant's credibility partly on
3 the basis of the fact that claimant was laid off for business reasons,
4 not impairments).

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6 Accordingly, the ALJ stated sufficient reasons to allow this
7 Court to conclude that the Administration discounted Plaintiff's
8 testimony and statements on permissible grounds. See Moisa v.
9 Barnhart, 367 F.3d at 885. The Court therefore defers to the
10 Administration's determination. See Lasich v. Astrue, 252 Fed. App'x
11 823, 825 (9th Cir. 2007) (court will defer to Administration's
12 credibility determination when the proper process is used and proper
13 reasons for the decision are provided); accord Flaten v. Secretary of
14 Health & Human Services, 44 F.3d 1453, 1464 (9th Cir. 1995).¹⁰

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24 ¹⁰ The Court should not and does not determine de novo
25 the accuracy of Plaintiff's testimony and statements concerning
26 his subjective symptomatology. Some evidence suggests that his
27 testimony and statements may be accurate. However, it is for the
28 Administration, and not this Court, to evaluate the accuracy of
Plaintiff's testimony and statements regarding the intensity and
persistence of Plaintiff's subjective symptomatology. See
Magallanes v. Bowen, 881 F.2d 747, 750, 755-56 (9th Cir. 1989).

CONCLUSION

For all of the foregoing reasons, Plaintiff's motion for summary judgment is denied and Defendant's motion for summary judgment is granted.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: June 8, 2018

/s/
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE